

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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RITA INTRIAGO,

Civil Action

Case No.:

Plaintiff,

-against-

**NOTICE OF REMOVAL**

BEST BUY CO., INC.,

Defendant.

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Defendant, BEST BUY CO., INC. ("Best Buy") by its attorneys, FISHMAN McINTYRE LEVINE SAMANSKY P.C., respectfully petitions the United States District Court, Southern District of New York, upon information and belief, as follows:

1. This case was originally commenced on or about September 14, 2020 in the Supreme Court of the State of New York, County of Orange. The suit is identified in the Supreme Court as Rita Intriago v. Best Buy (Store #461), Best Buy Co., Inc. and Middletown Crystal Rt 17 LLC, Index Number 005099/2020. A true copy of plaintiff's Summons and Verified Complaint is cumulatively annexed hereto as **Exhibit A**.

2. Best Buy first received notice of plaintiff's Summons and Complaint on or about October 8, 2020. See **Exhibit B**.

3. The grounds for removal are based on the original jurisdiction of this Court under 28 U.S.C. § 1332, which allows this court to hear matters based on diversity of citizenship of the parties. Best Buy filed an Answer to the plaintiff's Complaint in the Supreme Court, the State of New York, County of Orange on October 19, 2020. A true copy is annexed hereto as **Exhibit C**.

4. Plaintiff's Complaint in the Supreme Court of the State of New York, County of Orange, asserts monetary damages relating to personal injuries in a non-specified amount.

However, plaintiff specifically claims that as a result of the incident complained of therein, plaintiff “was caused to sustain severe and serious personal injuries to her mind and body. . . .” (See **Exhibit A**, paragraph 37).

5. At or about the time Best Buy filed an answer to plaintiff’s Complaint, Best Buy served upon plaintiff a number of discovery demands, including a demand for a statement of damages pursuant to C.P.L.R. 3017.

6. By way of supplemental response to Best Buy’s demand for a statement of damages, plaintiff’s counsel served upon the undersigned’s office, on May 10, 2021, a demand whereby “plaintiff deems herself entitled to an amount of one million dollars (\$1,000,000)” in damages”. See Plaintiff’s “supplemental Response to Demand for Damages”, annexed hereto as **Exhibit D**.

7. Based upon the foregoing, there can be no doubt that the amount in controversy herein exceeds \$75,000.00, exclusive of interest and costs.

8. This notice of removal is filed within 30 days of plaintiff’s damage disclosure served on Best Buy’s counsel’s office on May 10, 2021.

9. On or about October 19, 2021, Best Buy served upon plaintiff’s counsel a Request to Admit, namely that plaintiff admit that as of the time of the within cause of action arose, that is, the date of her accident, plaintiff was a citizen of the state of New York. A copy of said Request to Admit is attached hereto as **Exhibit E**.

10. Plaintiff failed to respond to Best Buy’s Request to Admit. Pursuant to CPLR 3123(a), the demand is deemed to have been admitted if not responded to within 20 days of service of the demand. Thus, by means of plaintiff’s non-response to Best Buy’s Request to Admit, plaintiff has admitted she is a citizen of the State of New York as of the date of the

subject accident.

11. Indeed, in plaintiff's Complaint (at paragraph 1), she admits to being a resident of the State of New York as of the time of the cause of action herein arose. Thus, plaintiff was a citizen of the State of New York as of the time her cause of action arose.

12. As a result of a motion to dismiss filed by Best Buy in the Supreme Court of New York, County of Orange, heard and decided by the Hon. Sandra B. Sciortino, J.S.C. on May 27, 2021, defendants, Best Buy (Store #461) and Middletown Crystal Rt 17 LLC, were dismissed from this within action with prejudice.<sup>1</sup>

13. Best Buy Co., Inc. is a corporation, incorporated in the State of Virginia, with its principal place of business in Richfield, Minnesota.

14. Based upon the foregoing, complete diversity of citizenship exists. Plaintiff is a citizen of the State of New York. On the other hand, Best Buy Co., Inc. (i.e., the sole remaining defendant in the within action) is a foreign business corporation, incorporated in the State of Minnesota and having its principal place of business in Minnesota. Therefore, this action is between a citizen of the State of New York (plaintiff) and a corporation other than New York, defendant, Best Buy Co., Inc.

15. Written notice of the filing of this Notice of Removal has been given to all parties in accordance with 28 U.S.C. §1446(d), as evidenced in the annexed Certificate of Service.

16. Promptly after filing this Notice with the Court and the assignment of a civil docket number, a copy of this Notice will be filed with the Supreme Court of the State of New York, County of Orange, in accordance with 28 U.S.C. §1446(d).

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<sup>1</sup> A fully executed and so-ordered partial stipulation of discontinuance with prejudice in favor of Best Buy (Store #461) and Middletown Crystal Rt 17 LLC is pending and will be submitted to this Court when available.

**WHEREFORE** Petitioner, BEST BUY CO. INC., the final remaining active defendant in the action described herein now pending the Supreme Court of the State of New York, County of Orange, under Index No. 005099/2020, prays that this action be removed therefrom to this Honorable Court.

Dated: New York, New York  
June 8, 2021

Yours etc.,



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